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SUSIE ZAHN

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SUSIE ZAHN, individually and as successor-in-interest to Decedent GARY OLDHAM, Plaintiff, vs. COUNTY OF ALAMEDA, a municipal corporation; GREGORY J. AHERN, individually and in his capacity as Sheriff for the Alameda County Sheriff's Department; DAVID LINCOLN, individually and in his capacity as a Deputy Sheriff for the Alameda County Sheriff's Department; JESUS RUBALCAVA-GOMEZ, individually and in his capacity as a Deputy Sheriff for the Alameda County Sheriff's Department; and DOES 1-25, inclusive, individually, jointly and severally, Defendants.	CASE NO.: 3:17-cv-1107 COMPLAINT FOR DAMAGES (42 U.S.C. Section 1983 and pendent tort claims) JURY TRIAL DEMANDED

INTRODUCTION

1. On March 3, 2015, Decedent Gary Oldham was pronounced dead. Decedent was found hanging by a sheet in his cell at Santa Rita Jail on February 21, 2015, after Defendants failed to supervise and/or treat him according to the law and the appropriate protocols, after having knowledge that Decedent was in need of monitoring and/or serious medical attention.

2. This civil rights and wrongful death action seeks compensatory and punitive damages from Defendants for violating the Fourteenth Amendment under the United States Constitution and state law in connection with the death of Decedent Gary Oldham, who died as a result of the unlawful conduct by the County of Alameda's Sheriff's Department.

3. This action seeks to recover damages for the violation of rights of Decedent's surviving successor-in-interest, Susie Zahn.

JURISDICTION

4. This action arises under Title 42 of the United States Code, Section 1983. Jurisdiction is conferred upon this Court by Title 42 of the United States Code, Section 1331 and 1343 and 42 U.S.C. Section 12188(a). This Court also has supplemental jurisdiction over Plaintiff's state law causes of action under 28 U.S.C. Section 1367. Venue is proper because the unlawful acts and practices alleged herein occurred in the County of Alameda, California, which is within this judicial district.

PARTIES

5. Decedent, GARY OLDHAM (hereinafter "Decedent"), was an individual residing in the State of California. Decedent was unmarried at the time of his death and died intestate.

6. Plaintiff SUSIE ZAHN (hereinafter "Plaintiff"), is and was at all times herein mentioned the mother of Decedent GARY OLDHAM and a citizen of the United States. SUSIE ZAHN is also the successor-in-interest to Decedent GARY OLDHAM.

7. Defendant COUNTY OF ALAMEDA (hereinafter "County") is a corporation, duly organized and existing under the laws of the State of California. Under its authority, the County operates the Alameda County Sheriff's Department.

8. Defendant GREGORY J. AHERN (hereinafter "Defendant Ahern"), is and was at all times herein mentioned the Sheriff and chief policymaker for the County of Alameda Sheriff's Department, and is sued individually and in his official capacity.

9. Defendant DAVID LINCOLN (hereinafter "Defendant Lincoln"), is and was at all times herein mentioned a Deputy Sheriff for the County of Alameda Sheriff's Department, and is sued individually and in his official capacity.

10. Defendant JESUS RUBALCAVA-GOMEZ (hereinafter "Defendant Rubalcava-Gomez"), is and was at all times herein mentioned a Deputy Sheriff for the County of Alameda Sheriff's Department, and is sued individually and in his official capacity.

11. Plaintiff is ignorant of the true names and capacities of Defendants DOES 1 through 15, inclusive, and therefore sues these defendants by such fictitious names. Plaintiffs allege Defendants DOES 1 through 15, and each of them were negligent and deliberately indifferent to DECEDENT's medical and mental health needs and safety, failed to provide psychiatric care to him or take other measures to prevent him from attempting suicide, violated his civil rights, wrongfully caused his death, and/or encouraged, directed, enabled and/or ordered other defendants to engage in such conduct. Plaintiff further alleges that the DOE Defendants violated Plaintiff's Fourteenth Amendment rights to familial association and companionship and caused the wrongful death of DECEDENT. Plaintiff will amend this complaint to state the names and capacities of DOES 1 through 15, inclusive, when they have been ascertained.

12. Plaintiff is ignorant of the true names and capacities of Defendants DOES 16 through 25, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff is informed and believes and thereon alleges that each Defendant so named was employed by Defendant County at the time of the conduct alleged herein. Plaintiff alleges that each of Defendants DOES 16-25 were responsible for the training, supervision and/or conduct of the Jail employees and/or agents involved in the conduct alleged herein. Plaintiff alleges that each of Defendants DOES 16 through 25 was also responsible for and caused the acts and injuries alleged herein. Plaintiff will amend this complaint to state the names and capacities of DOES 16 through 25, inclusive, when they have been ascertained.

ADMINISTRATIVE PREREQUISITES

13. Plaintiff is required to comply with an administrative tort claim requirement under California law. Plaintiff has exhausted all administrative remedies pursuant to California Government Code Section 910. Plaintiff filed an administrative claim with the County of Alameda on August 19, 2015. The County has failed to render a decision on the claim.

PRELIMINARY ALLEGATIONS

14. The County is a public entity and is sued under Title 42 U.S.C. § 1983 for violations of the Fourteenth Amendments of the United States Constitution, California state law, the California Tort Claims Act, and the Government Code for the acts and omissions of Defendants Ahern, Lincoln, Rubacalva-Gomez, and DOES 1-25, and each of them, who at the time they caused Plaintiff's and Decedent GARY OLDHAM's injuries, damages and death were duly appointed, qualified and acting officers, employees, and/or agents of County and acting within the course and scope of their employment and/or agency.

15. Plaintiff alleges that the conduct of each defendant deprived Decedent GARY OLDHAM of his constitutional right to life, his constitutional right to medical and mental health care for his serious but treatable medical and mental health needs, as well as custodial care and supervision, and caused Decedent GARY OLDHAM to suffer grievous harm and physical, psychological, and mental injuries prior to his death, and ultimately caused his death while he was in the custody of Defendants.

16. Each of the Defendants caused and is responsible for the unlawful conduct and resulting harm by, inter alia, personally participating in the conduct, or acting jointly and in concert with others who did so, by authorizing, acquiescing, condoning, acting, omitting or failing to take action to prevent the unlawful conduct, by promulgating or failing to promulgate policies and procedures pursuant to which the unlawful conduct occurred, by failing and refusing to initiate and maintain proper and adequate policies, procedures and protocols, and by ratifying and condoning the unlawful conduct performed by agents and officers, deputies, medical providers and employees under their direction and control.

17. Whenever and wherever reference is made in this Complaint to any act by Defendants County Sheriff's Department Officers Ahern, Lincoln, Rubalcava, and DOES 1-25, such allegations and references shall also be deemed to mean the acts and failures to act of each Defendant and DOE Defendants individually, jointly or severally.

FACTUAL ALLEGATIONS

18. On February 20, 2015, Decedent was in custody at Santa Rita Jail in Alameda County. At about 2231 hours, a housing unit nurse saw Decedent for a fall from his top bunk to the cement floor. Decedent's cellmate who found Decedent on the floor reported the fall. At the time, Decedent complained of a headache and left hip pain. Decedent stated that he had fallen to the floor while attempting to fix his bed. During his examination, Decedent began to behave oddly. Decedent became very quiet and stopped talking. At the time, Decedent was noted to have a blank stare and was mouthing words with no sound. Decedent was taken to a trauma room and an on call doctor was called. The doctor gave instructions for Decedent to be placed into the Outpatient Housing Unit (OPHU) for consistent observation and neuro checks.

19. On February 21, 2015, Decedent remained in OPHU. At about 2022 hours, Defendants Lincoln and Rubalcava-Gomez discovered Decedent hanging in his cell by a sheet. The paramedics were called. When the paramedics arrived, the Defendant deputies were able to take Decedent down. However, Decedent remained unresponsive. Decedent suffered from cardiac arrest. At the time, Decedent had no obvious signs of neurological activity, but did however have occasional full-body jerking. The paramedics rushed Decedent to the emergency room at ValleyCare Medical Center. At ValleyCare Medical Center Decedent was intubated and placed on hypothermic protocol. The hypothermic process was uneventful; once the Decedent began to be warmed up, he developed a persistent seizure.

20. Decedent suffered from anoxic encephalopathy and asphyxia as a result of the hanging.

21. On March 3, 2015, Decedent was extubated and his health rapidly declined until he was pronounced dead at 2245 hours.

22. Decedent leaves behind his mother, Susie Zahn, and extended family members.

23. Decedent's death was the proximate result of Defendants County, Ahern, Lincoln, Rubalcava-Gomez and/or DOES 1-25, failure to reasonably supervise and care for Decedent, after, on information and belief, being put on notice of Decedent's medical condition and potential suicidal ideation; including the statements and behavior he exhibited while in custody.

24. With deliberate indifference County, Ahern, Lincoln, Rubalcava, and DOES 1-25, inclusive, failed to take necessary, proper, or adequate measures in order to prevent the violation of Decedent's and Plaintiff's rights, the suffering and death of Decedent, and injuries and damages to Plaintiff. Defendants County, Ahern, Lincoln, Rubalcava-Gomez, and DOES 1-25, inclusive, were untrained or improperly trained in the proper detention and supervision of inmates at Alameda County jail. This lack of adequate supervisorial training demonstrates the existence of an informal custom or policy of promoting, tolerating, and/or ratifying with deliberate indifference the continuing negligent supervision of inmates, including Decedent, by Defendants DOES 1-25, and its jail staff.

25. Plaintiff alleges that Defendants failed to promulgate appropriate policies, guidelines and procedures and have failed to rectify improper practices and customs with regard to the mental health treatment and/or health and safety of Alameda County Jail inmates. The failures include, but are not limited to, a failure to meet legal, national/professional and medical standards relating to the medical and psychiatric care of inmates, failure to ensure that the staff engage in proper and required welfare checks of inmates, a failure to maintain adequate mental health staff for the Jail, a failure to maintain adequate custodial staff for the Jail.

26. The Defendants' deliberate indifference to Decedent's serious medical needs and safety resulted in his long-term suffering and ultimately his death.

27. As a result of the Defendants' conduct alleged herein, Plaintiff has lost the financial and emotional support, love and companionship of Decedent.

DAMAGES

28. Plaintiff was mentally, emotionally and financially injured and damaged as a proximate result of Decedent's wrongful death, including, but not limited to, the loss of decedent's familial relationships, comfort, protection, companionship, love, affection, solace, and moral support.

In addition to these damages, Plaintiff is entitled to recover for the reasonable value of funeral and burial expenses.

29. As a further direct and proximate result of the negligence and deliberate indifference of Defendants, and each of them, Plaintiff has been deprived of Decedent's financial support.

30. Each individual Defendant acted recklessly or with callous indifference to Decedent's life threatening physical, medical and/or psychiatric condition and to Plaintiff's constitutional rights. Plaintiff, as Decedent's successors in interest, is therefore entitled to an award of punitive damages against said individual Defendants.

31. Plaintiff found it necessary to engage the services of private counsel to vindicate her rights, and the rights of Decedent, under the law. Plaintiff is therefore entitled to recover all attorneys' fees incurred in relation to this action pursuant to Title 42 United States Code section 1988.

FIRST CAUSE OF ACTION
(42 U.S.C. Section 1983)
(Wrongful Death)
(Against Defendants Ahern, Lincoln, Rubalcava-Gomez, and DOES 1-15)

32. Plaintiff hereby re-alleges and incorporates by reference herein paragraphs 1 through 31 of this Complaint.

33. As set forth above, Plaintiff was subjected to deprivation of rights by Defendants Ahern, Lincoln, Rubalcava-Gomez, and DOES 1-25, inclusive, acting under color of law of the United States and State of California and of the County of Alameda, which rights include, but are not limited to, privileges and immunities secured to Plaintiff by the Constitution and laws of the United States. By reason of the aforementioned acts, these Defendants, have violated the constitutional rights and liberty interests of Decedent, including those provided in the Eighth and Fourteenth Amendments to the U.S. Constitution, and of each Plaintiff, as well as those which are protected under the Fourteenth Amendment's prohibition against depriving a person of a right to familial relationships without due process of law.

34. Defendants Ahern, Lincoln, Rubalcava-Gomez, and DOES 1-25, inclusive knew of Decedent's serious medical, physical and mental health condition, were deliberately indifferent to them, ignored them, failed to provide medical or mental health intervention and care for him.

35. Defendants knew or should have known that Decedent was suffering from a mental disability and was a high-risk candidate for suicide. Nevertheless, Defendants ignored his clear need for medical and mental health care, and failed to engage in adequate welfare checks or supervision.

36. Defendants knew and/or had reason to know, that Decedent had a serious but treatable medical condition, which required care and treatment. As a result of Defendants' deliberate indifference, Decedent was deprived of the necessary and indicated medical intervention, care and treatment. Without proper treatment or follow-up care, his mental state deteriorated, causing him to continue to suffer pain and mental anguish in violation of his Eighth and Fourteenth Amendment rights, resulting in his wrongful death.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

SECOND CAUSE OF ACTION
(42 U.S.C. Section 1983)
(Violations of Plaintiff's Civil Right to a Familial Relationship)
(Against Defendants Ahern, Lincoln, Rubalcava-Gomez, and DOES 1-15)

37. Plaintiff hereby re-alleges and incorporates by reference herein paragraphs 1 through 36 of this Complaint.

38. As a legal cause of Defendants', acting under color of law, acts and/or inactions, and whose deliberate indifference caused injuries which resulted in Decedent's death, Plaintiff was deprived of her constitutional rights to a familial relationship, all in violation of rights, privileges, and immunities secured by the Fourth and Fourteenth Amendments to the United States Constitution.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

THIRD CAUSE OF ACTION
(*Monell* - 42 U.S.C. Section 1983)
(Against Defendants County and DOES 16-25)

39. Plaintiff hereby re-alleges and incorporates by reference herein paragraphs 1 through 38 of this Complaint.

40. The aforementioned acts and/or omissions of the Defendants Ahern, Lincoln, Rubalcava, and DOES 1-25 in being deliberatively indifferent to Decedent's serious medical needs and safety and violating his civil rights were the direct and proximate result of customs, practices and policies of Defendant County and DOES 16 through 25, as alleged herein.

41. At all times herein mentioned, Defendants County, Ahern and DOES 16 through 25 maintained a policy or de facto unconstitutional informal custom or practice of permitting, ignoring and condoning, jail personnel to delay in providing adequate mental health and medical assistance for the protection of the health or safety of inmates; failing to properly observe and treat inmates, including inadequate: intake and screening and evaluation, diagnosis, referral to mental health professionals, treatment plans, administration of delivery of medications, medical record keeping, staffing, communication between medical, mental health and custodial staff, housing, supervision, access to mental and medical health care, failure to supervise, lax supervision, failure to report, investigate, and reprimand Jail personnel wrongful conduct.

42. Plaintiff alleges that Defendant County maintained a policy, custom or practice of failing to provide adequate staff in the Jail, causing a failure to properly monitor the inmates.

43. Plaintiff alleges that Defendant County maintained a policy, custom or practice of failing to provide the Jail with adequate mental health personnel.

44. Each policy, custom or practice posed a substantial risk of serious harm to Decedent and Defendant County knew, or should have known, its policy posed this risk.

45. Plaintiff is further informed and believes and thereon alleges that as a result of the deliberate indifference, reckless and/or conscious disregard of the misconduct by Defendants DOES 1-25, and/or each of them, Defendant County, Defendant Ahern and Defendants DOES 16-25, and/or each of them, encouraged the Jail personnel to continue their course of deliberate indifference and caused this lack of training in Jail personnel, resulting in the violation of the Plaintiff's rights as alleged herein.

46. The aforementioned acts and/or omissions and/or deliberate indifference by high ranking County officials, including high ranking Alameda Sheriff's Department Supervisors, Defendant Ahern, Defendants DOES 16-25, and each of them, resulted in the deprivation of Plaintiff's constitutional rights. These customs, practices or policies were the legal cause of Plaintiff's injuries, and each individual Defendant acting in accord with this custom, policy or practice acted with deliberate indifference to the needs of persons such as Decedent, who was in the custody and care of

Defendants. Said rights are substantive guarantees under the Fourth and/or Fourteenth Amendments to the United States Constitution.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

FOURTH CAUSE OF ACTION
(42 U.S.C. section 1983)
(Survival Action: Violation of Decedent's Civil Rights)
(Against Defendants Ahern, Lincoln, Rubalcava-Gomez, and DOES 1-25)

47. Plaintiff hereby re-alleges and incorporates by reference herein paragraphs 1 through 46 of this Complaint.

48. The foregoing claim for relief arose in Decedent's favor, and Decedent would have been the Plaintiff with respect to this claim had he lived.

49. Defendants acted under color of law in failing to reasonably supervise Decedent, were deliberately indifferent to Decedent's medical/psychiatric care, thereby depriving Plaintiff and Decedent of certain constitutionally protected rights, including, but not limited to, the right to due process of law, as guaranteed by the Fourteenth Amendments to the United States Constitution; said rights are substantive guarantees under the Fourteenth Amendments to the United States Constitution.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

FIFTH CAUSE OF ACTION
(C.C.P. Section 377.60 and 377.61)
(Wrongful Death- Negligence)
(Against Defendants Ahern, Lincoln, Rubalcava-Gomez, and DOES 1-25)

50. Plaintiff re-alleges and incorporates by reference herein paragraphs 1 through 49 of this Complaint, except for any and all allegations of intentional, malicious, extreme, outrageous, wanton, and oppressive conduct by Defendants, and any and all allegations requesting punitive damages.

51. Defendants County, by and through its agents and employees, Defendant Sheriff's Deputies, Jail and Medical Personnel, and Defendants Ahern, Lincoln, Rubalcava-Gomez, and DOES 1-25, negligent actions and/or negligent failure to act within the scope and course of their employment with Defendants, as set forth herein-above proximately caused the death of Decedent.

52. As an actual and proximate result of said Defendants' negligence, and the death of Decedent, Plaintiff has sustained pecuniary loss resulting from the loss of comfort, society, attention, services, and support of her son, Decedent, in an amount according to proof at trial.

53. As a further actual and proximate result of said Defendants' negligence, Plaintiff has incurred funeral and burial expenses, in an amount according to proof at trial.

54. Pursuant to California C.C.P. Sections 377.60 and 377.61, Plaintiff has brought this action, and claims damages from said Defendants for the wrongful death of Decedent, and the resulting injuries and damages.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

SIXTH CAUSE OF ACTION
(Violation of California Government Code § 845.6)
(Against Defendants County, Ahern, Lincoln, Rubalcava-Gomez, and DOES 1-25)

55. Plaintiff re-alleges and incorporates by reference herein paragraphs 1 through 54 of this Complaint.

56. Defendants knew or had reason to know that Decedent was in need of immediate and higher level medical care, treatment, observation and monitoring. Defendants failed to monitor Decedent according to protocol. Each such individual defendant, employed by and acting within the course and scope of his/her employment with Defendant County, knowing and/or having reason to know this, failed to take reasonable action to summon and/or provide Decedent access to such care and treatment in violation of California Government Code § 845.6.

57. As legal cause of the aforementioned acts of all Defendants, Plaintiff was injured as set forth above, and her losses entitle her to all damages allowable under California law. Plaintiff sustained serious and permanent injuries and is entitled to damages, penalties, costs, and attorney's fees under California law.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

JURY DEMAND

58. Plaintiff hereby demands a jury trial in this action.

PRAYER

WHEREFORE, Plaintiff prays for relief, as follows:

1. For general damages in a sum according to proof;
2. For special damages in a sum according to proof;
3. For punitive damages in a sum according to proof;
4. For reasonable attorney's fees pursuant to 42 U.S.C. Section 1988;
5. For injunctive relief as the court deems appropriate including that the policies of Defendant ALAMEDA COUNTY for policy or policies relevant to authorizing, allowing, or ratifying the practice by its Jail Personnel of being deliberately indifferent to mental/psychiatric/medical health needs of the inmates;
6. For cost of suit herein incurred; and
7. For such other and further relief as the Court deems just and proper.

Law Offices of John L. Burris

Dated: March 2, 2017

__/s/ John L. Burris___
John L. Burris Esq.,
Attorney for Plaintiff